IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10775 OF 2004

Kanhu Ranu Raskar (D/H)
Shri Deoman Kanhoba Raskar & Ors. ... Petitioners

Vs.

Radhakisan Gangaram Agarwal (D/H)
Jaikumar Radakisan Agarwal & Ors. ... Respondents

Mr. M.M. Sathaye for the petitioners.

Mr. M.D. Angal for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 25TH JANUARY, 2005.

P.C.:-

1. This is a tenants' writ petition. The trial court decreed the respondents-landlords' suit on the ground of bona fide and reasonable requirement. It appears that before the lower appellate court, an application was made under Order 41 Rule 27 of the Civil Procedure Code, for producing additional evidence. On that application, on 25/8/2004, the learned judge passed the following order:

> "By keeping open the point of consideration and admissibility of documents in appeal as provided u/O 41 R 27 the production is only allowed. Question of admissibility and evidentiary value and whether documents can be considered during appeal will be

considered at the time of final hearing of appeal."

2. It appears from a bare reading of the impugned judgment and decree dated 30/10/2004 passed by the lower appellate court that though the lower appellate court had stated in its order dated 25/8/2004 that the question of admissibility and evidentiary value of the documents produced on record would be considered at the time of final hearing of the appeal, the lower appellate court has not, in fact, done so.

3. In my opinion, it was improper on the part of the lower appellate court to do so. Having allowed the production of documents and having observed that their admissibility and evidentiary value will be considered at the final hearing, it was incumbent on the lower appellate court to examine the question of their admissibility and evidentiary value. Therefore, the matter needs to be remanded to the lower appellate court after setting aside the impugned judgment and decree dated 30/10/2004 passed by the lower appellate court.

Hence the following order:

O R D E R

"The impugned judgment and decree dated 30/10/2004 passed by the IIIrd Ad-Hoc Addl. District Judge, Malegaon, Dist.

Nashik in Civil Appeal No.26 of 1996, is set aside. The matter is remanded back to the lower appellate court. The lower appellate court is directed to consider the admissibility and evidentiary value of the documents, the production of which was allowed by it in the light of its order dated 25/8/2004. Needless to say that the respondents will also be permitted to file affidavit with regard to the documents which are allowed to be produced on record and if necessary tender some additional documents. Thus the lower appellate court shall reconsider the question of bona fide reasonable requirement and hardship of the landlord again in the light of the documents which are produced by the petitioner and which may be produced by the respondents and respondent's affidavit if any. This exercise should be completed by the lower appellate court within a period of one month from the date of receipt of this order by it. It is clarified that this court has not expressed any opinion on the merit of the case.

It is made clear that the lower appellate court will deal with only those documents, the production of which was

allowed and the documents which may be produced by the respondents."

4. Petition is disposed of in the aforestated terms.

5. All concerned to act on ordinary copy of this order duly authenticated by the Sheristedar of this court.

(SMT. RANJANA DESAI, J.)